

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: April 3, 2008

PLAT/PROJECT NAME: **SILVER LAKE RIDGE**

APPLICANT/  
LANDOWNER: Gordie Reykdal  
9420 31<sup>st</sup> Avenue SE  
Everett, WA 98208

FILE NO.: 07-104295 SD

TYPE OF REQUEST: Planned Residential Development (PRD) Subdivision and Rezone with Lot Size Averaging

DECISION (SUMMARY): **APPROVED** subject to conditions

**BASIC INFORMATION**

GENERAL LOCATION: 2406 – 108<sup>th</sup> Street SE, Everett (in Section 20, Township 28 North, Range 5 East, W.M.), Snohomish County, Washington).

Acreage: 4.85

Avg. Lot Area: 7,172 square feet

Gross Density: 4.7 du/ac

Lots: 23

Smallest Lot Area: 5,500 square feet

Net Density: 6.3 du/ac

Lot Size Averaging: 7,617 square feet

ZONING: CURRENT: R-9600  
PROPOSED: R-7200

Comprehensive Plan

General Policy Plan: Urban Low Density Residential (4-6 du/ac)

School District: Everett

Fire District: 1

Water Service: Silver Lake Water District

Sewer Service: Silver Lake Water District

**AGENCY RECOMMENDATION:**

Planning and Development Services: Approve rezone and preliminary plat subject to conditions.

**INTRODUCTION**

The applicant filed the Master Application on August 7, 2007. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on March 19, 2008 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 25, 26 and 27)

A SEPA determination was made on February 6, 2008. (Exhibit 24) No appeal was filed.

The Examiner held an open record hearing on March 20, 2008, the 68th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on March 20, 2008 at 2:04 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Laurey Tobiason, agent for the applicant, appeared and testified under oath. He presented an outline of the proposed project and answered questions from the Hearing Examiner and members of the public. Mark Flury, applicant's drainage expert, appeared and testified under oath regarding storm water drainage. Louis Emenhiser, applicant's wetlands expert, appeared and testified under oath concerning the wetlands on the subject parcel and the project's impact thereon.
3. Monica McLaughlin and Anne Goetz from Snohomish County Planning and Development Services appeared and testified under oath. They presented the staff report and answered questions from the Hearing Examiner and members of the public.
4. Kevin Thomas and Ann Grothe appeared and testified under oath. They are neighbors to the proposed project and expressed their concerns and opposition to the project.

The hearing concluded at 3:05 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of these hearings are available in the Office of the Hearing Examiner.

## FINDINGS, CONCLUSIONS AND DECISION

### **FINDINGS:**

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. **NATURE OF REQUEST:** The applicant requests a rezone of a 4.85 acre site, from Residential-9,600 (R-9600) to Residential-7200 (R-7200), and approval of a 23 lot subdivision utilizing the lot size averaging provisions of SCC 30.23.210. Four existing single-family residences currently occupy the property, with three to be demolished and one retained on one of the new lots. The remainder of the lots in the plat will be developed with single-family homes. The new homes will be accessed by a public cul-de-sac road to be constructed within the development, which will intersect with 110<sup>th</sup> Street SE. The northern 45 feet of the site is to be acquired from the County via the right-of-way vacation process. The unopened right-of-way (108<sup>th</sup> Street SE), adjacent to the existing underlying lot, is 60 feet wide. The southern 45 feet of the right-of-way would be sold to the applicant and he will be required to construct a public path within the 15 feet of right-of-way remaining.

Also associated with the proposal is a stormwater management system incorporating an underground detention vault and storm filter, utilities, and right-of-way improvements consisting of curb, gutter, planter strip and sidewalk along the development's road frontages. Water and sewer service is to be provided by the Silver Lake Water and Sewer District. A 2,297 square foot wetland on the west side of the site will be filled to accommodate the development. Another wetland on the east side of the site will be preserved from development and placed within a Native Growth Protection Area (NGPA) easement.

3. **APPLICATION:** The subject land use application was submitted to PDS on August 7, 2007, and was determined to be complete, as of the date of submittal, on September 4, 2007. In response to review comments by the County on September 28, 2007, November 29, 2007 and February 5, 2008, the applicant submitted revised review materials on October 30, 2007, January 14, 2008 and February 15, 2008, respectively.
4. **SITE DESCRIPTION:** The rectangular shaped site is 4.85 acres in size and is located on the north side of 110<sup>th</sup> Street SE, approximately 200 feet east of its intersection with 23rd Drive SE and 1/3 mile east of SR-527 (Bothell-Everett Highway). Silver Lake is approximately 1/4 mile southwest of the property (as the crow flies). The northern side of the parcel abuts the unopened right-of-way of 108<sup>th</sup> Street SE and 25<sup>th</sup> Avenue SE abuts the southeast corner of the property. Four single-family residences and outbuildings occupy the property, with one of the homes taking access from the unopened 108<sup>th</sup> Street SE right-of-way. The bulk of the property is vegetated with mature evergreen trees, grass and ornamental landscaping. Site topography generally slopes down from west to east. There are two Category 3 wetlands on the property. "Wetland B" is located on the west side of the site and is approximately 2,297 square feet in size. A portion (615 square feet) of "Wetland A" is located on the east side of the parcel, with the remainder extending off site to the east.

5. **ADJACENT ZONING:**

Location	Existing Use	Zoning
<b>Subject property</b>	<b>4 single-family homes</b>	<b>R-9600</b>
<b>North of subject parcel (north of unopened 108<sup>th</sup> Street SE right-of-way)</b>	<b>Single-family residential</b>	<b>R-9600</b>
<b>East of subject parcel</b>	<b>Single-family residential</b>	<b>R-9600</b>
<b>South of subject parcel (across from 110<sup>th</sup> Street SE)</b>	<b>Single-family residential</b>	<b>R-9600</b>
<b>West of subject parcel</b>	<b>Single-family residential</b>	<b>R-9600</b>

In the neighborhood of the proposed project PRD -7200 zoning is one block to the west, R-7200 zoning approximately three blocks to the east, and areas zoned R-8400, LDMR and/or R-7200 occurring within approximately five blocks to the north and south.

6. **SCHOOL MITIGATION:** The proposal is subject to Chapter 30.66C which requires payment of mitigation fees or comparable mitigation for each new dwelling unit to the appropriate school district. Pursuant to Section 30.66C.100, school impact mitigation fees will be determined, according to the Base Fee Schedule in effect for the Everett School District, at the time of building permit application and collected at the time of building permit issuance for the proposed units. Credit is given for 1 existing lot.
7. **DRAINAGE AND GRADING:** The drainage plan (Exhibit 23) and supplementary drainage report (Exhibit 8) submitted with the land use application is in conformance with the regulatory provisions of the County’s drainage code, SCC 30.63A. Rainwater runoff will be collected and transported via catch basins and pipes to an underground detention vault to be located within Tract 999 on the east side of the site. Water from the detention vault will be released at a controlled rate into a stormfilter catch basin to help clean the water before being released into a level spreader to be located at the edge of the adjacent wetland buffer. The wetland is part of a larger drainage course located within the adjacent plat to the east which is tributary to Penny Creek, which flows towards the south. Prior to site development, a full drainage plan must be approved pursuant to SCC 30.63A. Additionally, a grading permit, including a temporary erosion and sedimentation control plan (TESCP) consistent with regulatory provisions of Title 30.63B and Chapter 33 UBC, must be obtained for any grading outside of the County right-of-way. Grading to accommodate site development is estimated at 9,500 cubic yards excavation and 9,500 cubic yards fill.
8. **CRITICAL AREAS:** Based upon the Wetland Determination Report (Exhibit 7) and the plans submitted with the application, the project complies with County’s Critical Areas Regulations (CAR). There are two Category 3 wetlands on the property. “Wetland B” is located on the west side of the site and is approximately 2,297 square feet in size. A portion (615 square feet) of “Wetland A” is located on the east side of the parcel, with the remainder extending off site to the east. The applicant plans to fill “Wetland B” to accommodate the development, which is allowed by SCC 30.62.360 due to its classification and small size (under 5,000 square feet). As mitigation for filling the wetland the applicant proposes to set aside 2,410 square feet of additional buffer adjacent to the 25 foot wide required buffer of “Wetland A.” “Wetland A,” its required buffer and the additional buffer proposed as mitigation is to be preserved from development and placed within a Native Growth Protection Area (NGPA) easement within Lots 14-16.

9. **UNIFORM FIRE CODE:** Fire apparatus access as depicted has been found to meet the minimum requirements of SCC 30.53A.150. Prior to the start of combustible construction, fire hydrants will need to be installed and operational. Approved addresses are required to be placed on all new buildings and signage or pavement striping denoting fire lanes placed on proposed roads as necessary (to be determined by the county Fire Marshall's Office during the construction plan review stage) to ensure access by emergency vehicles is not impeded.
10. **UTILITIES:** Water and sewer service is to be provided by the Silver Lake Water District (Exhibit 42). The Snohomish County P.U.D. No. 1 indicates that it has sufficient capacity to provide electrical power to the proposed project (Exhibit 43)
11. **GMA COMPLIANCE:** The subject property is designated as Urban Low Density Residential on the Future Land Use map and is located within an Urban Growth Area (UGA). The Urban Low Density Residential designation allows mostly detached housing developments on larger lot sizes. Allowed implementing zones are R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB. The applicant is proposing a rezone of the site from R-9600 to R-7200, a listed implementing zone.
12. **GENERAL ZONING:** Single-family dwellings are a permitted use in the R-7200 zone. The number of lots proposed (23) is allowed per code. The proposal meets the minimum net density requirements of SCC 30.23.020 and access requirements of SCC 30.24.052. Prior to the issuance of building permits for the proposed dwellings, PDS staff shall verify that the building setbacks, building height, and lot coverage requirements outlined in SCC 30.23 will be met.

The proposal complies with the lot size averaging provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreations uses, if any, divided by the total number of lots equals or exceeds the minimum lot area of the zone in which the property is located. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. Lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet.

Lot size averaging calculations for this proposal are as follows:

Area in lots and the NGPA/E [164,849 square feet + open space [10,340 square feet] = 175,189 square feet ÷ number of proposed lots [23] = 7,617 square feet (exceeds the minimum lot size of 7,200 for proposed underlying zone).

13. **SUBDIVISION CODE:** The proposed plat meets Chapter 30.41A requirements. The proposed plat as conditioned meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community and also as noted below under the section titled Subdivision Requirements of State Law of this decision. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all flood hazard areas. As conditioned, the plat will meet all 30.41A.210 design standards for roads.
14. **SUBDIVISION REQUIREMENTS OF STATE LAW:** The plat is in conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed plat conforms to applicable zoning codes and the comprehensive plan. Open space will be provided by the open space and NGPA tracts and by the private yards associated with each home. The

single-family homes on individual lots will be compatible with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to road and walkway design standards, and with parks and recreation, traffic and school mitigation. Confirmation of availability of water, sewer and electrical service to the project has been obtained from the respective local utility purveyors.

15. **PARKS MITIGATION:** The project will comply with Chapter 30.66A SCC, which in this case requires payment of \$1,244.49 per each new single-family residential unit to be paid prior to building permit issuance for each unit. Compliance with Chapter 30.66A SCC is acceptable mitigation for parks and recreation impacts in accordance with County policies.
16. **TRAFFIC MITIGATION:** The Traffic Review Section of PDS, in concert with the Department of Public Works (DPW), reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code and is recommending approval. A summary of their comments is provided below.

1. Road System Capacity [30.66B.310]

Snohomish County Online Property Information indicates that there are three homes on the site that were built in 1920, 1935, and 1938. The applicant's representative indicated that there are four homes on the site. The County is able to give trip credit for three of the homes, even though they are on one legal lot, because the homes were built prior to the zoning law, so they are considered to be "legal". Since the applicant did not provide information showing that the fourth home was legally permitted, the County is unable to give trip credit for that home.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 20 additional units, which is 9.57 ADT/unit. This rate comes from the 7<sup>th</sup> Edition of the ITE Trip Generation Report (Land Use Code 210). A 5% credit for ADT and peak hour trips has been given to this project because a Transportation Demand Management (TDM) plan was submitted with the application and has been found acceptable by DPW. The development will generate 181.83 new ADT and has a road system capacity impact fee of \$48,548.61, based on \$267.00/ADT. This impact fee must be paid proportionately prior to the issuance of each building permit.

The ADT has been calculated as follows: 23 lots are proposed – 3 existing homes = 20 homes x 9.57 ADT/unit x .95 for TDM credit = 181.83

*The PM PHT has been calculated as follows: 20 homes x 1.01 PM PHT/home x .95 for TDM credit = 19.19*

*The AM PHT has been calculated as follows: 20 homes x 0.75 AM PHT/home x .95 for TDM credit = 14.25*

2. Concurrency [SCC 30.66B.120]

The subject development was evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works made a determination that the development is concurrent as of September 27, 2007. A record of developer obligations documenting the concurrency determination will be prepared by DPW in accordance with the provisions of SCC 30.66B.070. The expiration date of the concurrency determination will be six years from September 27, 2007. The development was deemed concurrent on the following basis:

X Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160:

The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: 202, 204 and 218. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160 (2) (a), the development is determined concurrent. The development generates 14.25 a.m. peak-hour trips and 19.19 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

3. Inadequate Road Condition (IRC) [SCC 30.66B.210]

The subject proposal will not impact any IRC locations identified at this time within TSA D with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of SCC 30.66B.

4. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along 110<sup>th</sup> Street SE. Urban standard frontage improvements are required consisting of 18 feet of pavement from the right-of-way centerline, vertical curb, 5-foot planter strips, 5-foot sidewalks, and 1-foot of right-of-way behind the sidewalks. Construction of frontage improvements is required prior to recording the subdivision unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

There is a DPW walkway project funded to connect a gap in the pedestrian facility on the north side of 110<sup>th</sup> Street SE from just west of 22<sup>nd</sup> Drive SE to 25<sup>th</sup> Avenue SE. The DPW design group indicated that the frontage improvements will be completed by the county if the applicant would deed 10 feet of property for right-of-way (to total 30 feet from the right-of-way centerline on the north side) as soon as possible. The right-of way has since been deeded.

Comments were received from a neighbor to the east that the short road adjacent to the east (25<sup>th</sup> Avenue SE) is a public road, and the development was initially reviewed using the incorrect assumption that the road is private. 25<sup>th</sup> Avenue SE was built as part of an older plat as a "half" road, with a minimum pavement width of 20 feet, curb and sidewalk on the east side. A deviation request was submitted requesting to ask that the west side of 25<sup>th</sup> Avenue SE be completed with a curb, curb radius and wheel chair ramp in lieu of pavement widening and sidewalk. The request was approved because 25<sup>th</sup> Avenue is a short dead-end road (less than 150 feet long) with no connectivity potential, serving only four homes. Pavement widening would be difficult because of the grade difference between 25<sup>th</sup> Avenue and the development property to the west. The proposal was determined to be acceptable to DPW. Testimony from the applicant's agent given at the public hearing indicated that the applicant was willing to add approximately two feet of pavement to 25<sup>th</sup> Avenue to the fence line

5. Access and Circulation [SCC 30.66B.420]

Access is proposed from 110<sup>th</sup> Street SE via a new public cul-de-sac road, which has been aligned opposite 24<sup>th</sup> Drive SE.

There is a 60-foot wide strip of unopened right-of-way along the north property line for 108<sup>th</sup> Street SE. The applicant has submitted a request to vacate that right-of-way, which has been shown on the plans as part of the development, and used towards the lot yield. Comments addressing the right-of-way vacation have been issued by Public Works, and the plan was revised accordingly. It was recommended that a minimum of 15 feet of the 60 feet of unopened right-of-way be retained by the County for a public walkway; to be constructed by the applicant for the subject development per EDDS 4-07 for a shared use path. The revised plans show 15 feet of right-of-way remaining along the north property line for the

development, and 45 feet of the unopened right-of-way has been incorporated into the development. A requirement for an easement between the end of the cul-de-sac and the shared use path was made in the first revision review, and the plans were revised for this review to show a 5-foot wide private easement between lots 10 and 11. The County Traffic Engineer does not object to the width of the easement width and proposal for a 5-foot wide hard surfaced path. However; it is the county's position that the easement must be public because it provides a link between a public road and a shared use path in public right-of-way. Testimony from county staff at the public hearing indicated that the county council must rule on the vacation petition.

The separation between 24<sup>th</sup> Drive SE and 23<sup>rd</sup> Avenue is approximately 235 feet, and EDDS requires 125 feet in this case, so it is more than adequate. Minimum centerline spacing has also been met between 24<sup>th</sup> Drive SE and 25<sup>th</sup> Avenue SE.

A profile of the cul-de-sac road was included in the plans, and the horizontal curves and curb return radii were identified for this review. A minimum 165-foot radius horizontal curve is required for the urban residential road that has a 25 mph design speed, and the curves shown meet that minimum requirement. There are no vertical curve or grade issues, and the curb return radii have been shown as having a 25-foot radius, which is acceptable since 110<sup>th</sup> Street is a non-arterial road.

A sight distance analysis was submitted that showed that 237 feet of stopping sight distance was available from the plat road on 110<sup>th</sup> Street SE to the east. The analysis and the stopping sight distance available were found to be acceptable. Testimony given by the applicant during the public hearing was that the studies on sight distances were based on the higher actual speeds of traffic on the road determined by traffic studies as opposed to the posted speed limits.

A deviation request was submitted for intersection sight distance. The required minimum intersection sight distance is 390 feet, the deviation request asked DPW to accept an intersection sight distance of 270 feet. The justification presented in the request was that traffic safety is not a factor of intersection sight distance, traffic flow (or level of service) on the road is affected by intersection sight distance. The County Engineer and Traffic Engineer do not object to a shorter intersection sight distance in some circumstances as long as the minimum stopping sight distance has been met. The deviation request was approved based on the ability of the location being able to meet minimum stopping distance requirements. Testimony given by the applicant during the hearing indicated that the applicant will enter into construction routing agreements with Snohomish County to control road usage during construction.

#### 6. Dedication/Deeding of Right-of-Way [SCC 30.66B.510, 30.66B.520]

110<sup>th</sup> Street SE is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. A dedication of 10 feet was needed, which has been shown on the plans.

The required amount of right-of-way has been recently deeded to the County by the applicant in response to negotiations regarding the DPW walkway project funded to connect a gap in the pedestrian facility on the north side of 110<sup>th</sup> Street SE from just west of 22<sup>nd</sup> Drive SE to 25<sup>th</sup> Avenue SE.

#### 7. State Highway Impacts [SCC 30.66B.710]

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount

of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at

$$181.83 \text{ ADT} \times \$36.00/\text{ADT} = \$6,545.88$$

According to the August 6, 2007 traffic study by Gibson Traffic Consultants, the project would not impact a State improvement project with 3 or more PM peak hour directional trips, so no traffic mitigation is owed to WSDOT. Comments dated August 13, 2007 have been received from WSDOT that confirm agreement with that, so no traffic impact mitigation fee is required.

8. Other Streets and Roads [SCC 30.66B.720]

There are no applicable local jurisdictions that have an interlocal agreement with the County for traffic mitigation; therefore the provisions of this section of code do not apply to this project.

9. Transportation Demand Management (TDM) [SCC 30.66B.630]

All new developments in the urban area shall provide transportation demand management measures. Sufficient transportation demand management measures shall be provided to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and 30.66B.625.

A TDM plan has been approved for this project. Therefore the TDM obligation fee has been waived, and a 5% reduction credit on the number of ADT generated by this project has been given in item 1 above.

10. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments dated October 10, 2007 were received from the Everett School District. They indicated that the elementary students would walk to Monroe Elementary School, which is located at 10901 27<sup>th</sup> Avenue SE, one block east of the development property. There are sidewalks already in place between the development property and the elementary school. The bus stop location identified by the school district for the middle and high school students is on 110<sup>th</sup> Street SE and 24<sup>th</sup> Drive SE, which is the entrance of the development.

Therefore, with the requirement for frontage improvements on 110<sup>th</sup> Street SE and construction of the shared use path on the north side of the development; safe walking conditions will be in place prior to recording the development.

17. **REZONE:** The applicant has requested a rezone of the parcel from R-9600 to R-7200. Chapter 30.42A covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

18. It is the finding of the Examiner that the request meets these requirements generally.

- (1) The subject is currently zoned R-9600 and a rezone to R-7200 is requested. The subject rezone request fits within the ULDR designation;
  - (2) As previously found the proposal provides for the public health safety and welfare;
  - and
  - (3) The minimum zoning criteria in Chapters 30.31A through 30.31F SCC are not applicable to this project.
19. In the context of the Growth Management Act, development regulations, and therefore rezones, must be consistent with and implement the comprehensive plan [RCW 36.70.040]. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447.
20. The proposed rezone to R-7200 will allow more affordable homes on smaller lots to be constructed, which will implement the comprehensive plan by facilitating the accommodation of new population growth into urban areas per the directive of the state Growth Management Act. The development will fit into the existing character of the neighborhood. The Silver Lake area has been experiencing rapid in-fill residential development during the last several years, with many large parcels being redeveloped into single-family subdivisions. An aerial photo of the neighborhood (Exhibit 15) shows that the subject parcel is one of the last large parcels remaining that hasn't already been redeveloped. Multi-family and retail development surrounds the north, south and east sides of Silver Lake and to the north along the Bothell-Everett Highway (SR-527). A large multi-family project is located on 110<sup>th</sup> Street SE, just down the street from the site. A neighborhood shopping center is at the intersection of 110<sup>th</sup> Street SE and SR-527. Public parks are available at Silver Lake, and the Interurban Trail parallels I-5, less than ¾ of a mile away from the site. Public transit and park and ride facilities are available in the vicinity. The project has been designed to provide adequate road access, connection and circulation to minimize traffic congestion, provide connection to adjoining neighborhoods, ensure adequate utility services, and provide emergency vehicle access. The configuration and design of the roads and access facilities in this development are in accordance with Chapter 30.24 SCC, 30.66B SCC, Chapter 30.53A SCC, and the Engineering Design and Development Standards (EDDS). The project has been designed to provide adequate and safe pedestrian access to and circulation within the development by sidewalks. The project also will be required to construct a public walkway within the unopened county right-of-way adjacent to the north part of the site which will provide a formal pedestrian connection between the proposed plat and existing neighborhoods to the north and west and to the nearest elementary school. The applicant proposes an underground detention vault for detention of stormwater. Preliminary plans are determined to conform to the provision of Chapter 30.63A SCC, Washington Department of Ecology Drainage Manual, and the EDDS. The project preserves a wetland which feeds into Penny Creek.

The preliminary plans submitted for the project are deemed to be in compliance with County GMA development regulations (which are required to implement the policies in the comprehensive plan) relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation, critical areas protection, compliance with fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to insure that adequate provision has been made for the public health, safety, and welfare of the citizens. PDS has determined that the proposed project can comply with the relevant provisions. During the construction plan review stage of the project the applicant will submit more detailed plans for County review. Construction permits will not be issued until compliance with these codes is again verified.
21. Based upon the foregoing, the Examiner finds that the applicant has met his burden of showing that a rezone is appropriate.

22. **ISSUES OF CONCERN:** Several pieces of correspondence were received from neighborhood residents expressing opposition to various aspects of the project (see Exhibits 31 through 38). Testimony given at the public hearing also expressed opposition to the project. Topics of concern can be summarized as follows:

Transportation/Pedestrian Safety

- Traffic is already bad in the neighborhood and drivers frequently exceed the speed limit.
- Residential roads are frequently used to avoid the crowded arterials.
- The project will lead to increased traffic on residential roads.
- It is no longer safe to walk within the neighborhood because of the traffic.
- Increased traffic is hazardous to school children.
- Speed bumps and traffic cameras are needed in the neighborhood.
- A walkway for school children needs to be maintained within the existing 108<sup>th</sup> St. SE right-of-way and not impacted during construction of the project.
- The applicant should be required to complete 25<sup>th</sup> Avenue SE to a full width right-of-way since it adjoins the project.
- Traffic safety measures need to be installed on 23<sup>rd</sup> Drive SE.

Drainage

- Rainwater runoff collects on this lot. If the parcel is developed, runoff will pool and cause problems.

Natural Environment/Quality of Life/Public Safety

- Removal of all the trees will destroy habitat for existing wildlife on the site.
- The wetlands should not be filled.
- Construction of the project will cause air and noise pollution.
- The project will lead to increased crime in the neighborhood.
- Living in densely populated areas creates a “tension set” environment.
- Where are the children going to play?
- The proposed buildings will be too close together. This hinders emergency access and results in fire danger to adjacent homes.

Housing/Zoning/Comprehensive Plan

- The density of the project not consistent with Comprehensive Plan.
- The density of project is too high and not compatible with the existing residential area.
- Build 4 or 6 houses on property maximum.
- Houses should be pre-sold before being allowed to be constructed.
- There is enough housing supply available already to meet demand. New houses sit empty.
- The project does not comply with Comprehensive Plan policies meant to ensure adequate infrastructure for new development.

Other

- The hearing should be rescheduled to a more convenient time.

The applicant has provided written responses addressing citizen concerns for the file (see Exhibits 18 & 20) and an analysis of how the project complies with the Comprehensive Plan (see Exhibit 21). The property owner submitted a written note (Exhibit 19) stating that there are no known eagle nests on the property.

23. **FINDINGS REGARDING PUBLIC COMMENTS AND CONCERNS:**

- A. **TRAFFIC CONCERNS:** The applicant has provided Exhibit 9 which specifically details the traffic impacts and an analysis thereof. As previously found, there will no doubt be increased traffic generated by more houses on the subject parcel. However, as previously found, the applicant is taking specific measures to mitigate such impacts. Such measures include payment of traffic impact fees, frontage improvements along 110<sup>th</sup> Street including curbs, gutters and sidewalks, deeding additional property for road purposes, improvement of 25<sup>th</sup> Avenue including additional pavement and curbs, and entry into construction routing agreements (HAUL ROUTES). The improvement of the unopened right-of-way along 108<sup>th</sup> Street will create a safe walking path for students going to and from school. Some of the other concerns about neighborhood traffic concerns must be addressed by the DPW.
  - B. **DRAINAGE CONCERNS:** The applicant has provided Exhibit 8 which specifically details the drainage plans for the project. As previously found, such plans make proper accommodation for both hydrating the wetland on site and adjacent wetlands, as well as holding, treating and slow discharging of excess storm water.
  - C. **NATURAL ENVIRONMENT/QUALITY OF LIFE/PUBLIC SAFETY:** While one wetland will be filled by the proposal, it is a Category 3 wetland. The other wetland on the site will be protected and additional buffer will be provided as previously found. Provisions will be made for proper hydration of this wetland and an adjacent wetland. Trees will be planted along internal streets. County regulations control construction methods to limit hours of work and dust generation. Current infrastructure exists to support the development. Open spaces and private yards will provide play areas for children. Park impact fees will be paid. Regarding fire safety, the width of the roadways and setbacks between residences are in compliance with County code. School impact fees will be paid.
  - D. **HOUSING/ZONING/COMPREHENSIVE PLAN:** As previously found, the proposed project will comply with applicable zoning regulations and is in compliance with the comprehensive plan. Density limits are complied with by the project.
  - E. **OTHER:** As previously found, notice of the public hearing was properly given.
24. Any Finding of Fact in this Decision, which should be deemed a Conclusion, is hereby adopted as such.

**CONCLUSIONS:**

- 1. The Examiner has jurisdiction to hear this matter and render a decision.
- 2. The proposal would be consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and with applicable design and development standards. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards.
- 3. Adequate public services exist to serve the proposal.
- 4. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.

5. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan.
6. The requests should be approved as submitted.
7. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**DECISION:**

The requests for a **REZONE** from R-9600 to R-7200 and concurrent Planned Residential Development **SUBDIVISION** of *SILVER LAKE RIDGE* are **GRANTED** subject to the following **CONDITIONS**:

- A. The preliminary plat, received by Planning and Development Services (PDS) on February 15, 2008 (Exhibit 22), shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
  - i. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."
  - ii. "The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit, as mitigation for impacts to the Nakeeta Beach park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by August 7, 2012 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
  - iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;  
  
"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."
  - iv. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,206.76 per lot for mitigation of impacts on county roads paid to the County,  
\$69.44 per unit for transportation demand management paid to the county for TSA B,

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”

- v. A 5-foot wide public pedestrian easement shall have been shown on the final plans between the north end of the cul-de-sac and the shared use path in the unopened right-of-way for 108<sup>th</sup> Street SE.

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall have been constructed along the property frontage with 110<sup>th</sup> Street SE unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. The west side of 25<sup>th</sup> Avenue SE shall have been completed with a curb, curb radius and wheel chair ramp and at least two feet of additional pavement in lieu of sidewalk. [SCC 30.66B.410]
- iii. The Right-of-way Vacation process for 108<sup>th</sup> Street SE must have been completed, except for a 15-foot wide strip south of the north right-of-way line, as shown on the plans received by PDS on January 10, 2008.
- iv. A 10-foot wide shared use path shall have been constructed within the remaining 15 feet of unopened right-of-way for 108<sup>th</sup> street SE per EDDS 4-07.
- v. A 5-foot hard surfaced walkway shall have been constructed in the 5-foot pedestrian easement between the north end of the cul-de-sac and the shared use path in the unopened right-of-way for 108<sup>th</sup> Street SE.
- vi. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- vii. The applicant shall enter into construction routing agreements (HAUL ROUTES) with the Department of Public Works prior to any grading and/or construction on the property.

- viii. The applicant shall consult with the Department of Public Works Traffic Division and install any required speed bumps within the project or two blocks of the project.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Decision issued this 3<sup>rd</sup> day of April, 2008.

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James Densley, Hearing Examiner Pro Tem

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The Decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more Parties of Record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### **Reconsideration**

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **APRIL 14, 2008**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A Petition for Reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;

- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

**Appeal**

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 17, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding this case.

**Staff Distribution:**

Department of Planning and Development Services: Monica McLaughlin  
Department of Public Works: Ann Goetz

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.” A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.